

REMARKS

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner appears to have withdrawn the rejection of claims 1-22, 25-34, 36, 37, 45 and 46 under 35 U.S.C. § 103(a) over Touzan et al., U.S. Patent No. 6,210,656.

Claims 1-25, 28-34, 36, 37 and 40-46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Giret et al., U.S. Patent No. 5,776,872 (hereafter “GIRET”).

Applicants point out that claims 47 and 48, submitted in response to the previous Office Action, are not addressed at all in the present Office Action. Claim 48 is not even mentioned in the Office Action Summary.

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the following remarks.

Claims 1-25, 28-34, 36, 37 and 40-46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over GIRET. The rejection again essentially alleges that GIRET teaches all of the elements which are recited in the rejected claims with the exception of an emulsion which comprises more than 40 % by weight of oil phase, the latter element being allegedly obvious to one of ordinary skill in the art in the opinion of the Examiner.

This rejection is respectfully traversed for all of the reasons which are set forth in the response to the previous Office Action. The corresponding remarks are incorporated herein.

Applicants point out again that the claimed cosmetic or dermatological cleansing emulsion differs in several important aspects from the cleansing compositions taught by GIRET. For example, the cleansing emulsion recited in present claim 1 comprises, *inter alia*, the following elements:

- (1) at least 42 % (and up to about 51 %) by weight of an oil phase;
- (2) an oil phase which comprises at least about 50 % by weight of a paraffin oil;
- (3) a content of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof;
- (4) a viscosity of from about 500 to about 3,500 mPa s at 100 s⁻¹.

Regarding the above element (1), GIRET expressly teaches that the personal cleansing product taught therein contains not more than about 40 % by weight, i.e., from about 3 % to about 40 % by weight of an insoluble nonionic oil or wax. Applicants note that the Examiner apparently takes the position that the term “about” before 40 % by weight suggests to one of ordinary skill in the art that significantly more than 40 % by weight, e.g., 42 % by weight as recited in present claim 1, of an oil phase can be present in the compositions of GIRET. However, taking into account the disclosure of GIRET as a whole it becomes apparent that one of ordinary skill in the art would be discouraged from using a concentration of oil phase which exceeds 40 % by weight by more than a negligible amount, and would clearly be discouraged to use 2 % more than 40 % (i.e., 5 % more on a relative

basis) of the oil phase.

In particular, according to col. 2, lines 1-18, col. 5, lines 21-25 and independent claims 1 and 15 of GIRET the maximum concentration of oil phase is (or preferably is) about 20 % by weight, and more preferably is about 15 % by weight. Additionally, the eight exemplary compositions which are set forth in the Examples of GIRET without exception comprise not more than of 12 % by weight of an oil phase (soyabean oil). Accordingly, GIRET can safely be considered to teach away from using significantly more than 40 % by weight of an oil phase, such as 42 % by weight as recited in present claims 1 and 42, or about 43 % by weight as recited in present claims 9, 10 and 28.

With respect to the above element (2) it is noted that GIRET not only fails to teach or suggest that at least about half (at least about 50 % by weight) of the oil phase of the cleansing compositions disclosed therein should be a mineral oil, but on the contrary teaches in col. 5, lines 55-57 that "highly preferred from the viewpoint of optimum lathering and mildness are the vegetable triglyceride oils", examples whereof include component (c)(ii) as recited in, e.g., present claim 1. Moreover, all of the exemplified compositions of GIRET contain exclusively vegetable triglyceride oil (soyabean oil). This is a disincentive rather than a motivation for one of ordinary skill in the art to provide a composition with an oil phase which comprises not more than half (not more than about 50 % by weight) of component (c)(ii).

Applicants note that at the bottom of page 8 of the present Office Action it is alleged that "it is well known that paraffin oils (i.e., mineral oil) have a polarity of around 35mN/m (as evidenced by

The Merck Index, see 892 form). Thus, the paraffin oil can also be the polar oil and the concentration would thus, fall within the amount that is instantly claimed.”

It is noted that the Examiner did not attach copies of the non-patent documents listed in form PTO-892, wherefore Applicants are unable to comment on the allegation that “paraffin oils (i.e., mineral oil) have a polarity of around 35mN/m”. It is pointed out however, that the present independent claims recite that the oil phase comprises (at least) two different components, i.e., (i) a paraffin oil and (ii) one or more oils having a polarity of from about 5 to about 50 mN/m, wherefore it is clear that even if it were assumed, *arguendo*, that some paraffin oils “have a polarity of around 35mN/m”, they would not be a part of component (c)(ii), i.e., the “one or more oils having a polarity of from about 5 to about 50 mN/m”, but a part of component (c)(i). In this respect, see also, e.g., dependent claims 16 and 17.

At any rate, if one were to assume, *arguendo*, that the paraffin oil and the one or more oils having a polarity of from about 5 to about 50 mN/m recited in the present claims can be identical, this would mean that more than 50 % by weight or even the entire oil phase of the claimed cleansing emulsion can be comprised of paraffin oil, which would be in even stronger contrast to the teaching of GIRET according to which vegetable triglyceride oils are the preferred oils for the oil phase of the compositions disclosed therein.

Regarding the above element (3) it is pointed out again that it is apparent that the passage in col. 10, lines 18-27 of GIRET, which passage is again relied upon in the present rejection and relates to suitable anionic polymers for the compositions of GIRET, has slipped into the disclosure of

GIRET by mistake. In particular, in col. 9, lines 42-48 GIRET states that the polymeric skin or hair conditioning agents that are preferably contained in these compositions are cationic or nonionic; moreover, all of the compositions of the Examples of GIRET are in accordance with this statement in that they comprise exclusively cationic polymers. It also is noted that GIRET provides specific examples of suitable cationic polymers in the passage from col. 9, line 66 to col. 10, line 18 but fails to provide specific examples of the other preferred class of polymers, nonionic polymers, and instead provides specific examples of anionic polymers, which is another clear indication that the disclosure of GIRET in this regard is defective in this regard.

With respect to the above element (4) Applicants point out again that the disclosure of GIRET makes it abundantly clear that the compositions disclosed therein must have a viscosity which is significantly higher than the viscosity recited in, e.g., present claim 1, i.e., from 10,000 to 40,000 cps (=10,000 to 40,000 mPa s). In this regard see (i) abstract, (ii) col. 2, lines 1-29, (iii) col. 6, lines 11-26, (iv) col. 8, line 38 to col. 9, line 2, (v) col. 9, lines 15-41, (vi) col. 12, lines 22-34, (vii) independent claim 1 and (viii) independent claim 15 of GIRET. In view thereof, the only possible conclusion is that the passage relied on by the Examiner in this regard, i.e., col. 10, lines 28-45 of GIRET is apparently inconsistent with the disclosure of GIRET as a whole and was included therein by mistake, wherefore it must be disregarded.

Additionally, regarding, for example, present dependent claims 19, 20 and 34, it is noted again that the Examiner has failed to provide any explanation whatsoever as to why the subject

matter recited therein allegedly is rendered obvious by GIRET.

It is submitted that for at least all of the foregoing reasons and the additional reasons set forth in the response to the previous Office Action, GIRET is unable to render obvious the subject matter of any of the rejected claims, wherefore the rejection of claims 1-25, 28-34, 36, 37 and 40-46 under 35 U.S.C. § 103(a) over GIRET is without merit and withdrawal thereof is warranted and respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
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August 21, 2009
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